

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 3, 2014 at 1:30 p.m.

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1. [12-25130](#)-C-13 MICHAEL GRAHAM MOTION FOR RELIEF FROM
APN-1 Brandon Scott Johnston AUTOMATIC STAY
4-28-14 [[40](#)]
NISSAN - INFINITI, LT VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 28, 2014. 28 days' notice is required. This requirement was met.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Lessor, Nissan-Infiniti, LT seeks relief from the automatic stay with respect to an asset identified as a 2011 Infiniti G25, VIN # ending in 0641. The moving party has provided the Declaration of Jill Jones to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jones Declaration states that the Debtor's lease matured post-petition, leaving due a balance of \$23,525.13. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$23,525.13, as stated in the Jones Declaration.

The Chapter 13 Trustee filed a statement of non-opposition.

June 3, 2014 at 1:30 p.m.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Lessor will be permitted to pursue state remedies to regain possession. The court shall issue a minute order terminating and vacating the automatic stay to allow Nissan-Infiniti to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow Nissan-Infiniti to gain immediate possession of the property and dispose of the same in a commercially-reasonable sale.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. §362(a) are vacated to allow Nissan-Infiniti to pursue nonbankruptcy remedies with regard to the property commonly known as 2011 Infiniti G25, VIN # ending in 0641.

2. [14-23849](#)-C-13 JULIE/GREG WEATHERLY
SMK-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-25-14 [[13](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: The Debtor's Chapter 13 case having been converted to Chapter 7 on May 29, 2014, the Motion for Relief from stay is rescheduled to June 3, 2013 at 9:20 a.m. on the court's Chapter 7 law and motion calendar. The court removes this Motion from the Chapter 13 calendar.

3. [13-35864](#)-C-13 CHARLES BEYER
PD-2 Ulric N. Duverney

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-30-14 [[88](#)]

ONEWEST BANK, N.A. VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2014. Twenty-eight days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Trustee, having filed a response, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the motion for relief from the automatic stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Onewest Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 5228 Chicago Avenue, Fair Oaks, California. The moving party has provided the Declaration of Tina Richardson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Richardson Declaration states that as of March 18, 2014, Debtor is in default for failure to pay property taxes. Specifically, on February 3, 2014, Creditor disbursed \$4,817.87 for the payment of Sacramento County taxes on Debtor's behalf. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$288,865.02 (including \$288,865.02 secured by movant's first trust deed), as stated in the Richardson Declaration, while the value of the property is determined to be \$277,429, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee's Response, filed 05/19/14 (Dkt. 100)

Trustee requests that the court consider the following:

- (1.) This case was filed December 19, 2013 and remains unconfirmed.
- (2.) Onewest Bank, N.A. is provided for under the current plan as a Class 2 non-purchase money security interest.
- (2.) Debtor is delinquent \$219.50.

Discussion

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made property tax payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Onewest Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Onewest Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 5228 Chicago Avenue, Fair Oaks, California.